

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 13,744

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Appeal of)

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INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare reducing her ANFC grant. The issue is whether changes in the petitioner's household composition should result in a reduction in her ANFC benefits.

FINDINGS OF FACT

The facts are not in dispute. Prior to April, 1995, the petitioner received ANFC as a "group 3" household for herself and her two children. A male companion who lived with the petitioner, but who was not her children's father, was not included in the petitioner's ANFC household.

In April, 1995, the petitioner gave birth to her and her companion's child. The Department added both the child and the father to the petitioner's ANFC group. At the time, the father was unemployed--so this resulted in an increase in the petitioner's ANFC.

In May, 1995, the father became employed. Based on his reported earnings, the Department reduced the petitioner's ANFC grant. The petitioner originally took issue with the Department's calculations of the father's earnings. However, after a continuance of the original hearing, the amount of the father's earnings appears to have been resolved to the parties' satisfaction.

The petitioner continues to take issue, however, with several underlying aspects of the the Department's decision. She questions the policy that requires the father of one of her children to be included in the entire family's ANFC grant. She also disputes that fact that the Department counts as income all but \$50 of the child support the petitioner receives for her other two children. And, the petitioner disputes that fact that as of July 1, 1995, the Department began counting as unearned income \$30 of the fuel and utility expenses "subsidized" to her as a recipient of public housing.⁽¹⁾

ORDER

The Department's decision is affirmed.

REASONS

1) GROUP 3 INCOME DEEMING

On July 1, 1994, the Department implemented the "Welfare Restructuring Project", a demonstration project which randomly divides recipients into three groups with different eligibility requirements in certain areas, including work requirements, in order to compare the outcomes and determine which methodology will "enable more ANFC families to achieve self-sufficiency by strengthening families and increasing parental responsibility, by rewarding work and promoting self-support, and by putting a limit on how long families can receive welfare before a parental work obligation begins." W.A.M. 2208.1.

The petitioner was randomly placed in "Group 3" status. Under the restructuring regulations, Group 3 would

... have its eligibility for and amount, if any, of ANFC benefits and Reach Up requirements (including the requirement to accept unsubsidized or subsidized employment) determined according to policies designated herein as applying to Group 3 and to all other policies contained herein that are not superseded by the policies that apply to Group 3. Requirements relating to the Reach Up program that were in effect on June 30, 1994, and have not been changed or eliminated by rule subsequent to that date remain in effect for assistance groups assigned to Group 3.

W.A.M. 2208.1(3)

On December 1, 1994, five months following implementation of this restructuring project, the regulations defining "assistance group" for ANFC purposes were revised to read as follows:

An "assistance group" is defined as one or more individuals whose requirements, income and resources are considered as a unit to determine need for ANFC.

An ANFC assistance group must include one or more eligible dependent children. In addition, the assistance group must include all siblings (including half-siblings) who live with the dependent child or children, who meet one of the deprivation factors according to WAM 2330-2339 and who qualify under the ANFC age criteria, as defined in policy.⁽²⁾ If the family assignment is Group 2 or 3, a child is considered an eligible dependent child under the unemployment deprivation factor, even if one or both parents are employed full time. The parent(s) of each child included in the ANFC assistance group must be

included in the ANFC assistance group if he or she lives in the home with the children.

W.A.M. 2242

(emphasis supplied to show revisions)

Under regulations formerly in existence, the petitioner's companion and their common child could not be included in the ANFC group unless one of the criteria in footnote one were met. See W.A.M. 2242,

effective July 1, 1994, Bulletin No. 94-12. This is still true for persons placed in Group One.⁽³⁾ However, those in Groups 2 and 3 are exempted from the above criteria. The regulations defining "unemployed parent" were also revised on December 1, 1994, to further underscore the change:

An unemployed parent is either a parent in Group 1 whose minor children are in need because he or she is not working at all or is working part time or a parent in Group 2 or Group 3 who is working full time, part time, or not at all . . .

W.A.M. 2333.1

The regulations most recently adopted have, in effect, waived the definition of deprivation formerly found in the regulations and broadened the category of unemployed parents to include fully employed parents for recipients who are in Group 2 or Group 3. The petitioner, as a member of a Group 3 family must include all of her children in her ANFC assistance group including her child who is actually being supported by its working father. Under the regulation cited at W.A.M. 2242 above, that child's father must also be included in the assistance group as long as he is living in the home with the petitioner and her children.

Inasmuch as the Department's decision to include the petitioner's youngest child and that child's father in the group, as well as the father's income, is consistent with its revised regulations, the Board is bound by law to affirm. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 19.

II) CHILD SUPPORT

The regulations clearly provide that as a group 3 household all the child support paid directly to the petitioner counts as unearned income to the household--less \$50 a month as a "pass through". W.A.M. § 2252(E). The petitioner's dispute with this appears to stem from some unfortunate mistaken advice or misunderstanding the petitioner received based on a conversation she had with an employee of the Office of Child Support. The Department's decision in this regard, however, is in accord with the pertinent regulations.

III) FUEL AND UTILITY ALLOWANCE.

On July 1, 1995, regulations were adopted by the Department of Social Welfare which provide as follows:

Unearned income

Unearned income includes the following:

. . .

F. \$70.00 of a Housing and Urban Development (HUD) fuel or fuel and utility subsidy or \$30.00 of a utility-only subsidy which has been included in HUD's calculation of the rent of an ANFC family living in subsidized housing, thereby reducing its rental obligation by an equivalent amount. This amount is not limited to a subsidy actually paid to the ANFC family. An applicant or recipient who documents an actual subsidy amount less than the standard may have the actual amount counted as unearned income in

benefit and eligibility calculations.

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W.A.M. 2252

Housing Allowance - Eligibility Standards

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A standard amount which, in most cases, represents a portion of the fuel and/or utility subsidy used by Housing and Urban Development (HUD) in the calculation of rent for ANFC families in subsidized housing will be considered unearned income for ANFC purposes, according to WAM 2252. The standard amount for those families who must pay for fuel or fuel and utilities is \$70. The standard amount for those families who must pay for utilities only is \$30. An applicant or recipient who documents an actual subsidy amount less than the standard may have the actual amount counted as unearned income in benefit and eligibility calculations.

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W.A.M. 2245.3

The regulations adopted by the Department on July 1, 1995, clearly require utility allowances in public housing to be at least partially treated as unearned income. Although standardized figures are used, recipients are allowed to reduce those figures if their utility allowance is actually lower than that figure. The petitioner has presented no evidence that those are the facts in her situation.

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1. An additional issue, whether the father should be allowed as a deduction from his gross income an amount withheld from his wages for support of other children of his, was resolved at the hearing. The Department does allow these withholdings as a deduction.
2. Eligibility for ANFC requires establishing that a child is deprived of parental support or care for one of the following reasons and that the income and resources available to the parent in custody of the child and the child are insufficient to meet the child's total needs according to Department standards:

1. Death of a parent;
2. Continued absence of a parent;
3. Physical or mental incapacity of a parent;
4. Unemployment - (ANFC-UP).

W.A.M. § 2330

3. See Bowen v. Gilliard, 55 USLW 5079 (U.S. Supreme Court, 1987).